☞ THE PETITION OF CERTAIN NON-CONSCRIPTS, RESPECTFULLY PRESENTED TO THE CONFEDERATE STATES CONGRESS.

To the Speaker and Members of Congress of the Confederate States of America:

Your petitioners respectfully represent that they are all over the age of thirty-five years, or under the age of eighteen years. They were all "enrolled in the military service of the Confederate States" *previous* to the 16th day of April, 1862, the date of the Conscript Act. Some of your petitioners belong to companies mustered and received into service for twelve months, some of whom re enlisted for the war previous to the 16th day of April, 1862, and others who have not re enlisted; some who have received the bounty money, and others who have not received it. Most of your petitioners had, under the call of their respective States and the President of the Confederate States, enlisted for "three years or the war," previous to the 16th of April, 1862.

Your petitioners are from the different States of the Confederacy—some of them over fifty years old, others under seventeen years of age. At the different periods of their enlistment the prospects of the army of the Confederacy were darkened and being overshadowed by a series of mishaps, blunders, and military misadventures. The cause so dear to every true and brave Southron was, to all outward appearances, waning, and needed renewed energies and unmistakable popular manifestations of personal bravery and individual sacrifices

The call for fresh troops, increased energies, and redoubled exertions, was promptly responded to by your petitioners, as volunteers in the army of the Confederate States. At that critical juncture of the affairs of the country, neither your petitioners nor the public had any idea of the passage of the Conscript Act. It was then believed that it was the settled policy of the Confederate Government to rest its sustaining reliance on the untrammeled free will and high spirit of the Southern people to be called forth, organized, and put into action under their respective State organizations. Your petitioners could not have anticipated the passage of the Conscript Act, or the adoption and sanction of any system of military organization by the Confederate States Government, which would claim to rest as a basis on the abnegation of the cherished principle of State sovereignty and individual freedom of will. They, as did their States, regarded the cardinal principle of individual personal liberty and unquestioned State sovereignty as the keynote to the existing revolution.

Under impulses of no ordinary character, your petitioners, in the hour of their country's danger, left home, family, all, *to fight as freemen in the army of freemen*. To preserve sacred their birthright—individual, personal liberty, under their respective State Governments—they were, and are now, prepared to sacrifice everything but their honor and manhood. They believed, as they had every right to believe, that the agreed *status* of the army would remain on the basis which had been adopted and sanctioned by the responsive legislation of the Confederate Government. Had that ascertained policy and accredited system of military organization been sustained and carried out, not one of your petitioners would have complained.

Under the conviction that no such change would or could be made, your petitioners volunteered freely and re-enlisted willingly. They thus entered into a contract with the Confederate States, which they had no right to suspect would ever be violated by that high-contracting party. In this they were over-confident. On the 16th day of April, 1862, the Conscript Act became a law. The will of your honorable body, as made known in that law, by terms too plain to be mistaken, and too imperious to be lightly disregarded, annulled all previous contracts made by volunteers; and by explicit terms of *coercive legislation*, made men under the age of 35 years and over 18 years, soldiers *for the war*, or until they attained the age of 35 years—thus drawing, as with "hooks of steel," every male citizen within the prescribed ages (with a few excepted cases) immediately and entirely from the control of State action, and placed them at the disposal of the President *during the war*.

This law, had it been unqualified and unaccompanied by a reciprocating return to the body of society, and under the control of the different States, (that class then in the army, represented by your petitioners,) could never have been sanctioned by the States. As a *bonus* to society, and a concurrent guarantee to the States, your honorable body inserted certain qualifications, restrictions, and conditions precedent to the main body of the act.—They were in the following words:

"*Provided, further*, That all persons under the age of 18 years or over the age of 35 years, who are now enrolled in the military service of the Confederate States, in the regiments, squadrons, battalions, and companies hereafter to be re-organized, shall be required to remain in their respective companies, squadrons, battalions, and regiments for ninety days, unless their places shall be sooner supplied by other recruits, not now in the service, who are between the ages of 18 and 35 years. And all laws and parts of laws providing for the reorganization of volunteers, and the organization thereof, into companies, squadrons, battalions, and regiments, shall be, and the same are hereby, repealed."

On the promulgation of the law, with this qualification, (without which your petitioners aver the law could never have been passed,) there was but one construction placed on it in the army and throughout the country, so far as your petitioners are advised and believe; and that was, that all persons over the age of 35 years or under 18 years, who were, on the date of the law, "enrolled in the military service of the Confederate States," *should be discharged on the 16th day of July*, 1862; and this without restriction, qualification or peradventure. *These were the terms of the law.* They were plain, unequivocal and mandatory. Common sense—universal public opinion, concurring military, popular and official sentiment, thus understood, accepted and adopted the law. Nor was it anywhere, by any one, or under any circumstances, otherwise spoken of, considered or regarded, so far as your petitioners are advised, *in or out of the army*, until General Order No. 46, rescinding General Order No. 14, was issued by the Adjutant-General, under and by authority of the Secretary at War.

That order took the country and the army by surprise. It fell as a death knell upon the assured expectations of your petitioners. It struck the popular ear with no less astonishment. It disclosed a new, secret, and dangerous spring of Executive and ministerial power, as unlooked for as it was novel and perilous to the spirit and genius of the revolution inaugurated on the declared principle of eternal opposition and unyielding resistance to Executive or *quasi* legislative encroachments on the chartered rights and constitutional privileges of the people. It manifested a will to assume power where none was bestowed, or intended to be bestowed, and to exercise high retroacting and annulling prerogatives where all exercise of Executive will or ministerial discretion was positively and distinctly inhibited. It presented a painful instance of a plain, palpable and dangerous infraction of the constitutional guaranties and vested rights of your petitioners [illegible] honorable body, and unmistakably announced in the Conscript Act.

Your petitioners, feeling that this interpolating order of the Adjutant-General was a clear, palpable, and unauthorized (*by the law*) infraction of their rights, consulted counsel, and procured his written opinion, which was published, and will be laid before your honorable body. In thus seeking counsel, your petitioners were not actuated by any other spirit than that of a disposition to ascertain their legal rights, as defined and enumerated by your honorable body. They had *volunteered* without the least idea of the passage of any such law. That law, without their solicitation, not only revoked and annulled the act of their volunteering, but, in distinct terms, released them from all military service after the 16th day of July, 1862, *as a consideration to society and the different States* for the unconditional, peremptory, and mandatory draft, which the same law made indiscriminately on the community. It in express terms *released* all over 35 years or under 18 years, that *it might claim, demand, and impress* all between those ages. It *discarded* those over 35 years of age, that it might COERCE those under that age.

This was a severe tax on the community at large, and not less severe on your petitioners as a class. It took the manhood and youth of the country, with or without their consent; but it undertook and guaranteed that all over 35 years or under 18 years should be discharged. This was, in terms, a solemn legislative compact with the States and society. As such, severe and harsh as it was, it was ratified by acquiescence, and no settled opposition was made.

You petitioners even now would greatly prefer that matters should have remained as they were. But they were disposed of by the law, and respectfully insist that what the law did the Secretary at War cannot undo. The compact made by your honorable body, if good in one part, must stand unaltered in every part. The clause releasing your petitioners was in a proviso, and was and is paramount to the enactments in the main body of the act. It was the codicil to the legislative will, and was superior in its active powers to any and all parts of the act which might happen to conflict with it. If the retroactive interpolation entered by authority of the Secretary at War repealed that proviso, according to all law and every rule of sound construction the same repealing order would annul and destroy the main body of the act. On this subject your petitioners are advised the authorities are most satisfactory.

But the Secretary at War has repealed the proviso, recalled the warrant of discharge, and placed his own construction on the whole law, and directed that your petitioners should not be discharged—the twelve-months' men—until the expiration of ninety days after their term of service, and claims to retain all persons enlisted for the war previous to the 16th of April, 1862, for the war.

Your petitioners are advised that the rights, privileges, and immunities vested in them by virtue of the proviso to the said act, are full and complete, attended by no conditions and restrained by no qualifications, and that those rights admit of no intermediate and counteracting restrictions, either from the Executive or ministerial Department of the Government. They aver, most respectfully, that any interpolating or retroactive orders, whether by the Chief Magistrate, or any one or more of his subordinate functionaries, is in law (however they may temporarily act on your petitioners) unavailing, null and void. But they are advised that, as there is in operation no judicial process by which they could test this matter as a class, their only legitimate means of redress is through your honorable body.

There can be no question that *all* laws passed by Congress are *supreme*, and challenge the *obedient acquiescence* of the President and every Department of the Government, until they are repealed or pronounced unconstitutional by a competent judicial tribunal. And any violation of any one or more of such laws by any Department of the Government, is not less culpable than a similar violation by any other member of society.

The reason, spirit, and intention of the law in question, as well as its words, context, and subject matter, are plain and unmistakable. There is no point, no word, no object, no purpose, which is not fairly and plainly set forth. The question then presents itself, painful, serious and vital, shall the law prevail, or shall the intervening, unauthorized interpolation of the Secretary at War prevail? Shall an army order revoke a solemn act of Congress?—Shall Congress or the Executive rule the people, control the army, and legislate for the country?—Have we a constitutional Government, with specific powers granted, beyond which no department of the Government shall pass, or have we an unlimited Government, dependent only on Executive will or ministerial caprice? *Are the People free or is the Executive supreme?*

These are no idle questions. They are solemnly propounded, and merit a solemn response. It was legislative encroachments and Executive usurpations which destroyed the Union, never to be restored. Shall the Southern States, confederated, yield the same destroying element of self-destruction? The answer which your honorable body may see fit to give will descend with its weighty consequences to posterity. The voice of history is not less potent in its warnings against Executive assumption or ministerial abuse of power than the hopes of the future are dependent on your response.

In view of the dangers which beset the country, your petitioners cannot better conclude their appeal than by adopting the significant language uttered by Patrick Henry, in the Virginia Convention, on the 7th January, 1788, when he exclaimed: "The real rock of political salvation is self-love—perpetuated from age to age—in every human breast, and manifested in every human action.—When the commons of England, in the manly language which became freemen, said to their king, YOU ARE OUR SERVANT,—then was the temple of liberty complete."

It is with no view of avoiding danger, or shunning responsibilities, that your petitioners ask their discharge. Their hearts, hopes, energies, are all enlisted in this war. They had rather lose all and perish themselves, than fail to maintain the cardinal principle on which this war turns. They will never yield to an insolent foreign foe, or succumb to any power which seeks to subvert the inherent rights of the States or to destroy the individual liberty of the free-born citizen. Feeling that in this order of revocation, (General Order, No. 46,) not only their rights, but the rights of the people, and the legitimate powers and functions of Congress, are invaded and endangered, they seek the proper remedy; should their services be needed, they, and all they have, will be freely offered up on the altar of constitutional liberty. But they are not prepared to yield a silent submission to the violation of their rights or the subversion of the vested immunities, when their *title papers are derived from your honorable body.*

Your petitioners respectfully ask, that they may be fully heard before your honorable body, through their counsel.

THE PETITIONERS,
By their Counsel, JOHN B. GILMER.

Richmond, Aug. 8th, 1862.

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